

The Extraordinary Chambers in the Courts of Cambodia*

by

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The Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is a uniquely-designed national Cambodian court with a statutory mandate to bring to justice surviving senior leaders of Democratic Kampuchea and those who were most responsible for genocide, crimes against humanity, serious war crimes, and certain other Cambodian crimes during the Pol Pot era (17 April 1975 to 6 January 1976). An estimated 1.7 million Cambodian citizens perished during that period and millions more were victimized. The 2001 Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended in 2004 (“ECCC Law”), and the 2004 Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (“UN/Cambodia Agreement”) together established the ECCC as a special court in Cambodia requiring the participation of international judges, prosecutors, and administrators in the ECCC alongside their Cambodian counterparts.

The creation of the ECCC took longer—from 1997 to 2007—than was the experience for any other international or hybrid criminal tribunal in the post-Cold War era. The end result achieved a credible institutional character that meets, at least on paper and perhaps

also in practice, adherence to international standards of due process. I had the privilege to play a fairly significant role in the decade-long process of building the ECCC, first as the U.S. Ambassador at Large for War Crimes Issues (1997-2001), then as an officer of a non-governmental organization, and, since 2003, as a law professor. Those experiences, particularly from an American perspective, necessarily inform this historical and constitutional survey of the ECCC.

Part I of this essay examines the negotiating history of the ECCC from its earliest stages through to its final closing act with the adoption of the ECCC Internal Rules in June 2007. Part II of the essay explains characteristics of the ECCC that bear upon issues of jurisdiction, composition and administration, decision-making, pardon and amnesty, due process rights, withdrawal of cooperation, and the rights of victims.

Part I

Negotiating History

1997

By early June 1997 American efforts already were underway to propose to the Cambodian government the creation of a commission of inquiry or truth commission as an initial step that might ultimately lead to a criminal tribunal examining the actions of the regime of Cambodian leader Pol Pot from 1975 to 1979. With Pol Pot's actual arrest suddenly becoming quite plausible in late June 1997, interest in finding or building a court with jurisdiction to competently and credibly prosecute him rose rapidly.

Meanwhile, on 21 June 1997, Cambodia's First Prime Minister, Prince Norodom Ranariddh, and Second Prime Minister, Hun Sen, signed a letter to U.N. Secretary-General Kofi Annan asking "for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes

against humanity during the rule of the Khmer Rouge from 1975 to 1979.” The co-signed letter was a significant leap for the Cambodian government and it constituted a lasting premise for international engagement to achieve accountability. Unfortunately, Hun Sen’s internal coup in July 1997, during which Ranariddh was ousted from the government, derailed serious discussions between Cambodia and the United Nations. Nonetheless, on 27 November 1997, Hun Sen and Ung Huot, the new First Prime Minister and Minister of Foreign Affairs and International Cooperation, sent President Bill Clinton a letter which in part stated, “The Royal Government of Cambodia would be most grateful to the United States government if help could be provided, according to US laws, to set up an international criminal tribunal and to bring to trial the Khmer Rouge leadership while they are still alive...”

1998

U.S. officials had determined that there was no firm legal authority under U.S. law as it applied during the Pol Pot era to proceed with a successful prosecution of Pol Pot or other senior Khmer Rouge leaders if they were in U.S. custody on U.S. territory. But there was enough confidence that if any of these suspects could be detained under joint U.S./foreign custody on foreign territory by arrangement with another government and preferably the Cambodian government, then the United States could participate in an apprehension and detention strategy.

On 28 April 1998, the U.S. Mission to the United Nations circulated a draft UN Charter Chapter VII resolution aimed at establishing the International Criminal Tribunal for Cambodia (ICTC) as a subsidiary organ of the Security Council with its seat in The Netherlands. The primary argument for setting up the ICTC was to ensure that when senior Khmer Rouge leaders were apprehended or voluntarily surrendered, there would

be at least the shell of a tribunal authorized by the Security Council to initiate prosecutions relatively quickly (preceded by ongoing investigations and indictments prepared by the ICTC prosecutor). Some, in particular China, believed that there was no longer any threat to international peace and security in Cambodia and therefore the Security Council had no legal authority to set up a judicial body as a means of non-military enforcement.

The American proposal was pushed to the extreme backburner when, on 6 May 1998, the Cambodian government released a statement noting Pol Pot's death, expressing the desire to still try Khmer Rouge leaders, committing itself to hold "free, fair and democratic elections for 26 July 1998," and requesting the setting up of "a national or international court of justice after the 26 July 1998 general elections in Cambodia." Some Council members also wanted to delay further consideration of the American proposal until after the elections. The logic of the requested delay was bolstered by the action of the U.N. Special Representative for Human Rights in Cambodia, Thomas Hammarberg, who in April 1998 had chosen three senior experts to examine accountability options for Cambodia and to deliver recommendations. It is characteristic of U.N. practice that once an experts group or commission of inquiry is formed to examine a contentious issue, Council members typically await the completion and delivery of the report to the United Nations before taking any further steps. That is precisely what happened at the United Nations with the Group of Experts for Cambodia Report, which was not delivered to U.N. Member States until March 1999.

1999

During the final days of 1998 two top Khmer Rouge leaders, Khieu Samphan (Pol Pot's right-hand man) and Nuon Chea ("Brother No. 2" under Pol Pot), defected to

Cambodian authorities and into the arms, literally, of Prime Minister Hun Sen. The public impression at the time was that amnesty of some character was offered in order to neutralize these Khmer Rouge leaders and bring them in from the forests. However, in a declaration delivered on 1 January 1999, Hun Sen denied this. The United States was the first country following the defection episode to comment publicly and unambiguously on the need for accountability.

I visited Cambodia, Thailand, China, France, and The Netherlands in mid-January 1999 to press forward with accountability and explore several approaches, including an international criminal tribunal that would be established by the U.N. Security Council under its U.N. Charter Chapter VI authority at the request of the Cambodian government and with its full cooperation. Although the concept I advanced remained subordinate to the U.S. position for a Chapter VII tribunal as the most desirable type of court, it opened the door for continued efforts to explore options outside the conventional Chapter VII approach, which was making no progress in the Security Council.

The U.N. Group of Experts for Cambodia concluded in their March 1999 report that the best approach for accountability in Cambodia would be for the Security Council to establish a Chapter VII international criminal tribunal in the mold of the ICTY and ICTR. In their view, only an international tribunal would guarantee international standards of justice, fairness and due process of law. But the U.N. Group of Experts for Cambodia Report did not sit well with Hun Sen, who stressed in a letter to U.N. Secretary-General Kofi Annan that Hun Sen's Aide-Memoire and the analysis therein of 21 January 1999 sought "more comprehensive justice for Cambodia and her people" and it had called for a full investigation of crimes committed from 1970 to 1998.

On 8 March 1999 Ta Mok, who had been one of two military commanders functioning as the “hammer” of the Central Committee during Pol Pot’s regime, was arrested by the Cambodian military. The challenge of actually bringing to justice a leading figure in the atrocities of the Pol Pot era suddenly became a reality—for the first time. However, Cambodian Foreign Minister Hor Nam Hong rejected the recommendations of the U.N. Group of Experts for Cambodia, including the establishment of an international criminal tribunal. He said Cambodia would try Khmer Rouge leaders in its own courts.

On 28 April 1999 Hun Sen sent a letter to Annan stating that there would be a domestic trial of Ta Mok “with the assistance from foreign countries, in which foreign judges and prosecutors would be allowed to take part fully, thereby ensuring that [the] trial [will] meet international standards of due process.”

In June 1999 discussions in Washington led to a shift by month’s end in the U.S. position which argued for a mixed tribunal created under both Security Council and Cambodian government authority. The new U.S. position, which was briefed to Hun Sen in July 1999, proposed that a “Special Tribunal” would be authorized by the Security Council under an enabling resolution (outside Chapter VII and thus reflecting the concept explored in early 1999). The Cambodian government would have to agree to the key principle of U.N. control of the mixed tribunal on Cambodian soil.

On 30 July 1999 two U.N. Assistant Secretary-Generals, Alvaro de Soto (Political Affairs), and Ralph Zacklin (Legal Affairs), made a proposal which was a sharp departure from the Group of Experts for Cambodia Report and abandoned Security Council engagement under Chapter VI or Chapter VII or otherwise under the U.N. Charter.

Then, on 17 August 1999, Hun Sen categorically rejected the U.N. plan, which had been leaked to the press. As reported at the time: "...Hun Sen called it a question of 'whether Cambodia should be cooperating with the UN or the UN should be cooperating with Cambodia.'"

Hun Sen and Sok An (Chairman of the Council of Ministers and Hun Sen's senior adviser on Khmer Rouge accountability) then met in September 1999 with State Department Under Secretary for Political Affairs Tom Pickering and me. Pickering pressed Hun Sen to walk back from the three options he had just presented to Annan in New York and instead move towards endorsing a "special chamber" or "special session" in the Cambodian courts which would have a majority of international judges.

At Hun Sen's invitation, I visited Cambodia in late October 1999 and prepared while there a working draft of the "Law on the Establishment of Extraordinary Sessions in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea," which shortly thereafter was revised at my suggestion to designate "Extraordinary Chambers" rather than "Extraordinary Sessions." It included a *non bis in idem* provision to ensure that the ECCC would determine whether the prior trial "met international standards of justice and due process existing at the time of such trial." The draft also proposed two Co-Prosecutors, one Cambodian and the other international, who would work jointly to investigate, prepare indictments, and prosecute cases. The supermajority voting requirement was set forth in detail for a court comprised of a majority of Cambodian judges.

Cambodian officials reacted positively, worked the text of the document, and informally floated their draft law with U.N. lawyers in late December 1999. The reaction of the U.N. lawyers to the draft was largely negative. Further revisions to the

draft law followed and, under cover of letter dated 29 December 1999, Sok An formally submitted the draft law to Annan for review by the United Nations.

2000

In early January 2000, Hun Sen agreed to the requirement of two Co-Investigating Judges, one a Cambodian and the other an international figure essentially selected by the U.N. Secretary-General. Hun Sen also agreed to resolve all remaining obstacles, including confirmation that Ieng Sary (foreign minister during the Pol Pot regime) would not be excluded from the jurisdiction of the ECCC despite the domestic pardon and amnesty accorded him in 1996.

Annan met with Hun Sen in Bangkok on 12 February 2000 and stressed the need for “minimum international standards” while agreeing to send a U.N. negotiating team to Phnom Penh in March. Immediately prior to the U.N. team’s trip to Cambodia, the United States intervened with a proposal that a Pre-Trial Chamber could be established that would convene to resolve disputes between the Co-Prosecutors and disputes between the Co-Investigating Judges.

On 20 March 2000 Sok An provided a letter to Corell, the Under-Secretary General for Legal Affairs and Legal Counsel of the United Nations, indicating that the Cambodian government would seek no more amnesties. But on March 21 Corell rejected a set of compromises in the talks, and they ground to a halt.

The month of April 2000 proved decisive. In addition to my own visit with the Cambodian negotiators, U.S. Senator John Kerry engaged and exerted considerable influence with Annan, Corell, and Hun Sen directly by phone and by personal visits.

The U.N. mission team negotiated a draft Memorandum of Understanding governing the cooperation between the United Nations and Cambodia in the

establishment and operation of the ECCC and created a marked-up copy of the ECCC Law to ensure its conformity with the Memorandum of Understanding. Hun Sen and Kerry agreed to a timetable for passage of the ECCC Law by mid-December 2000. The Cambodian government moved forward legislatively with the draft ECCC Law and, on 2 January 2001, it was adopted by the National Assembly.

2001-2007

On 15 January 2001 the Cambodian Senate unanimously passed the ECCC Law. By mid-summer 2001 the ECCC Law was finalized and signed into law by King Norodom Sihanouk on 10 August 2001.

Given the transition to the Bush administration in the United States in late January 2001 with its different priorities and my own departure from office at the end of the Clinton Administration, American attention to the judicial process in Cambodia unfortunately declined. The U.N. team was distressed that the ECCC Law was adopted before its consistency with the UN/Cambodia Agreement could be assured.

On 8 February 2002 Corell stated, “[T]he United Nations has come to the conclusion that the Extraordinary Chambers, as currently envisaged, would not guarantee the independence, impartiality and objectivity that a court established with the support of the United Nations must have...Therefore...the United Nations has concluded...to end its participation in this process.”

A core group of governments, including Japan, France, Australia, the United States, Canada, and the United Kingdom began to question Corell’s judgment on shutting down the negotiations. Alternatives were explored and, in July 2002, Hun Sen said Cambodia could amend the ECCC Law in light of the long-standing U.N. concerns. Momentum gathered in the U.N. General Assembly to re-engage on Cambodian

accountability. Finally, in resolution 57/228 of 18 December 2002, the General Assembly welcomed the promulgation of the ECCC Law and requested that Annan resume negotiations, without delay.

Thus, under General Assembly instruction, Annan and Corell had little choice but to resume the negotiations with Cambodia. But their initial effort, with a non-paper dated 6 January 2003, walked back on a number of issues that had been resolved during the pre-February 2002 period of negotiation between the Secretariat and the Cambodian government.

Following more negotiations, on 6 June 2003 the text was finalized and the UN/Cambodia Agreement was signed by both parties. The General Assembly also directed that the expenses of the ECCC be borne by voluntary contributions from the international community.

The UN/Cambodia Agreement finally was ratified by Cambodia's National Assembly on 4 October 2004 and officially promulgated on 19 October 2004 following amendment of the ECCC Law to ensure that the two documents would be mutually consistent. By March 2005 most of the international community's voluntary share of the ECCC three-year budget was pledged. The Cambodian and international judges, Co-Prosecutors, and Co-Investigating Judges were sworn into office in July 2006, at which time the Co-Prosecutors began their preliminary investigative work in earnest. A group of judges under the leadership of the international Co-Investigating Judge, Marcel LeMonde (France), was tasked to draft and negotiate the "internal rules" (essentially the rules of procedure and evidence) of the ECCC. It was not until June 2007, practically one year after they started, that the judges in plenary session approved the ECCC Internal Rules.

Part II

Constitutional Structure of the ECCC

In its final form, the ECCC has three pillars of constitutional structure that should be understood in any examination of the workings of the Chambers. The three pillars are the ECCC Law, the UN/Cambodia Agreement, and the ECCC Internal Rules (together, the “ECCC constitutive documents”). The UN/Cambodia Agreement was negotiated with the clear intent, as expressed in both the ECCC Law and the treaty, that it would apply as law in Cambodia and be enforceable under Cambodian law. Any deviation from this cardinal rule might trigger United Nations withdrawal of cooperation under Article 28 of the UN/Cambodia Agreement.

In this part of the chapter, I examine the integrated character of the ECCC constitutive documents in seven major areas of the Chambers’ work: jurisdiction, composition and administration, decision-making, pardon and amnesty, due process rights, withdrawal of cooperation, and the rights of victims.

Jurisdiction

Our focus will be on temporal, personal, territorial, and subject matter jurisdiction.

Temporal Jurisdiction

The ECCC’s temporal jurisdiction, namely the period of time within which the alleged crimes that are investigated by the Chambers would have had to have occurred, covers, to the day, the beginning through to the end of the Pol Pot regime: 17 April 1975 to 6 January 1979. As is typically the case in negotiating the creation of criminal tribunals, the narrow temporal jurisdiction for the most prominent atrocity crimes giving rise to the tribunal prevailed.

Personal Jurisdiction

The individuals who may be investigated and prosecuted before the ECCC constitute a narrow set of alleged perpetrators: the “senior leaders of Democratic Kampuchea and those who were most responsible” for the crimes falling within the subject matter jurisdiction of the Chambers. This small set of individuals reflects the original purpose of the ECCC which always has been to investigate and bring to justice the top leadership the Pol Pot regime and notorious atrocity lords of the period. It also reflects the limited capacity and resources of the ECCC to undertake investigative and trial work.

Territorial Jurisdiction

There is no explicitly established territorial jurisdiction for the ECCC as has been the case for the International Criminal Tribunals for the Former Yugoslavia (“ICTY”), the International Criminal Court for Rwanda (“ICTR”), and the Special Court for Sierra Leone. The fact that the ECCC is a national court of Cambodia may explain the difference, as any national court’s reach is confined by the territorial boundaries of the nation unless some extraterritorial basis for jurisdiction is claimed, which has not yet been the case with the ECCC.

Subject Matter Jurisdiction

The crime of genocide set forth in Article 4 of the ECCC Law is defined with specific reference to the definition found in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

The definition for crimes against humanity in the ECCC Law tracks the similar definition found in the ICTR Statute. The real value in the distinction between the two documents is that the UN/Cambodia Agreement embraces a definition for crimes against

humanity which does not limit it to an attack directed against any civilian population “on national, political, ethnical, racial or religious grounds,” which is the potentially limiting feature of Article 5 of the ECCC Law and was originally drawn from Article 3 of the ICTR Statute.

Probably one of the lesser prosecuted atrocity crimes will be the category of war crimes set forth in Article 6 of the ECCC Law, which establishes the Chambers’ jurisdiction over grave breaches of the Geneva Conventions of 12 August 1949.

Article 3, as amended, of the ECCC Law identifies three separate crimes in the 1956 Penal Code of Cambodia—homicide, torture, and religious persecution—which are incorporated into the subject matter jurisdiction with an extended statute of limitations for an additional 30 years beyond their normal limitation of enforceability. Charging these particular crimes may prove useful for particular actions of certain defendants in addition to the atrocity crimes set forth in Articles 4, 5, and 6 of the ECCC Law, particularly if the high thresholds and *mens rea* required for the latter are too difficult to prove beyond a reasonable doubt.

Composition and Administration

The Extraordinary Chambers, which the ECCC Law established as a new and separate court within the Cambodian legal system, has a total of 17 judges presiding in three chambers. In each chamber the majority of the judges are Cambodian, which was the outcome long sought by Cambodian negotiators and opposed by the U.N. lawyers.

In a compromise between the common law tradition, namely, a strong prosecutor, and the civil law tradition of investigating judges, a unique formula emerged to create both positions and, further, to share the responsibilities of each office between a Cambodian and a foreigner. Thus, there are two Co-Investigating Judges, one a

Cambodian citizen and the other a foreigner nominated by the U.N. Secretary-General. All indictments and investigations are their joint responsibility. There are two Co-Prosecutors, one a Cambodian citizen and the other a foreigner nominated by the U.N. Secretary-General. All requests for indictments and prosecutions are their joint responsibility.

Uniquely, then, the ECCC has a bifurcated administrative and funding structure, with Cambodian staff hired and supervised by the Cambodian Director and international staff hired and supervised by the U.N.-appointed Deputy Director, who also controls the international voluntary funding deposited in the U.N. Trust Fund. The official language of the ECCC is Khmer but the official working languages are Khmer, English, and French. Cambodian negotiators long sought, and succeeded, in including Russian for translations of public documents and interpretation but the UN/Cambodia Agreement requires that it be at the Cambodian government's discretion and expense. Many Cambodian lawyers, including judges, were educated in Russia.

Decision-Making

Any decision by the Pre-Trial Chamber, the Trial Chamber, or the Supreme Court Chamber requires the supermajority (majority plus one) vote of the judges. This means that any decision or judgment will require the affirmative vote of both Cambodian and international judges, although the precise mixture of votes can vary. The primary negotiating objective of the supermajority vote was to ensure that no vote could be taken solely by the Cambodian judges and no vote could be taken solely by the international judges. With respect to due process rights, no defendant will be convicted without the vote of at least one international judge.

The only way the prosecution or investigation is halted is if the Pre-Trial Chamber decides by supermajority vote that it should end. The rationale behind this procedure is that it prevents one Co-Investigating Judge or one Co-Prosecutor from blocking an investigation or prosecution, respectively, by failing to reach agreement with his or her counterpart or simply derailing an investigation or prosecution due to political or other kinds of influence.

The original ECCC Law negotiated through 2000 and adopted in 2001 provided for an intermediate Appeals Chamber between the Trial Chamber and the Supreme Court Chamber. However, apparently for cost reasons, U.N. negotiators of the UN/Cambodia Agreement successfully sought an amendment to the ECCC Law, adopted in 2004, which removed the Appeals Chamber from the ECCC.

Pardon and Amnesty

Both U.S. and U.N. negotiators consistently sought confirmation from the Cambodian government that Ieng Sary's 1996 pardon/amnesty would not shield him from the jurisdiction of the ECCC. The 20 March 2000 letter from Sok An to Hans Corell clarified the exclusivity and meaning of the pardon/amnesty. However, the scope of the pardon, primarily what crimes it actually covers, is left to the ECCC judges to decide—a point codified in both the ECCC Law and the UN/Cambodia Agreement. Thus the key issue confronting the ECCC on pardons and amnesties is essentially narrowed to one individual: Ieng Sary if indeed he is indicted.

The amnesty covers only prosecution under one law – the 1994 Law to Outlaw the “Democratic Kampuchea” Group – and that law reaches only crimes that are outside the temporal and subject matter jurisdiction of the ECCC. With respect to the “pardon . . . for the sentence of death and confiscation of all his property” in Ieng Sary's 1996

pardon/amnesty, its exact language points to a fair conclusion that the pardon relieves Ieng Sary of the sentence of death and confiscation of his property, but it would not insulate him from being otherwise held accountable, if found guilty, for any of the ECCC crimes.

Whether the principle of *non bis in idem* would bar ECCC prosecution of Ieng Sary would be open to scrutiny. *Non bis in idem* does not preclude a subsequent prosecution where the original proceedings against a defendant so lacked legitimacy or were so fundamentally flawed that they cannot be properly characterized as a legitimate national trial.

Due Process Rights

Cambodia's participation in the International Covenant on Civil and Political Rights ("ICCPR") evidences that country's modern acceptance (since 1992 as a state party and from 1980 to 1992 in the capacity as and with the responsibility of a signatory) of the international agreement that remains the foundation for all regional agreements and is repeatedly referenced in relevant international criminal cases. As a state party to the International Criminal Court ("ICC"), Cambodia accepted the legal obligation that the ICC's rules of procedure and evidence and hence the international standards of due process embodied therein and in the Rome Statute would be applied in the event a Cambodian national ever were to be prosecuted before the ICC.

As duly constituted courts of the Kingdom of Cambodia, the Extraordinary Chambers will apply, subject to the ECCC constitutive documents, the rules of criminal procedure found under Cambodian law.

Cambodian courts are required, in the Law of Criminal Procedure and the ECCC constitutive documents, to comply with the standards set forth in the ICCPR for any

criminal trial of an individual regardless of when the underlying crime took place in Cambodian history.

Although the ECCC Law and the UN/Cambodia Agreement reference only Articles 14 and 15 of the ICCPR, Cambodia, as a ratified party of the ICCPR, is obligated to comply with all of the Covenant's provisions.

Withdrawal of Cooperation

The American and U.N. negotiators, in their separate ways, worked hard and sometimes stubbornly with their Cambodian counterparts to strengthen the integrity of the ECCC and enable the international judges and prosecutors and the United Nations to withdraw from the process if it became tainted in a manner that could not be corrected or overcome.

This is fairly powerful leverage on the work of the ECCC and demonstrates the international community's insistence that the Chambers uphold international standards of due process and remain free of corrupting influences.

There is no mandatory resort to another court, such as the International Court of Justice, in the event of a dispute between the Cambodian government and the United Nations under the UN/Cambodia Agreement. Rather, the UN/Cambodia Agreement relegates any dispute over the interpretation or application of the treaty either to negotiation or to "any other mutually agreed upon mode of settlement."

Rights of Victims

The ECCC was never conceived by those who negotiated its creation as an instrument of direct relief for the victims, although the protection and use of victims as *witnesses* in the investigations and trials is addressed in detail. The victims' numbers are

simply too colossal and the mandate and resources of the ECCC far too limited to address the individual needs, including the award of reparations, for so many victims.

There are no provisions in either the ECCC Law or the UN/Cambodia Agreement addressing the rights or needs of victims other than in Article 36 (as amended) of the ECCC Law, which grants victims the right of appeal. At first impression this may seem odd, as there is no express provision entitling victims to participate in Trial Chamber proceedings. The ECCC Internal Rules pick up the slack on this issue with detailed rules for participation by victims in the criminal proceedings of the Chambers.

Conclusion

In this chapter I have sought to provide an overview of both the negotiating history and constitutional framework of the ECCC. There is no question that the ideal court for the investigation and prosecution of the senior Khmer Rouge leaders and other masterminds of the atrocity crimes during the Pol Pot era—namely, one with state-of-the-art constitutional construction mandating international participation and compliance with the entire body of international standards of due process—was not achieved. But the negotiating history reveals how much was accomplished against considerable odds and despite many reversals of fortune. The ECCC, particularly with the approval of the ECCC Internal Rules in June 2007, should satisfy minimal international standards of due process provided any possible corrupting influences in Cambodia are held at bay through the checks and balances and U.N. oversight capacity within the ECCC itself.

For the development of international criminal law, the ECCC represents a significant collaboration of a national political and legal system with the United Nations, out of which has been developed a novel structure of criminal law and procedure.

If the negotiating history of the ECCC is any guide, the setbacks that are certain to burden the operation of the ECCC will need to be addressed with patience and persistence and with the overriding goal of ultimately achieving credible justice for the millions of victims of the Pol Pot era. In the end, this is an exercise in retribution and that is precisely what any leading perpetrator found guilty in a fair trial deserves for this outrage upon humanity.